IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appal No. 597-SB of 1995

Date of decision: 19.03.2007

Gurtej Singh and another .....Appellants

Versus

State of Punjab .....Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Rajesh Girdhar, Advocate,
for the appellants.

Mr. M.S.Joshi, Deputy Advocate General, Punjab,
for the respondent.

A.N.Jindal, J.

This appeal is directed against the judgment of conviction and sentence dated 27.09.1995 passed by Additional Sessions Judge, Faridkot vide which both the accused were convicted under Section 307/34 IPC and were sentenced as under:-

> " (a) Gurtej Singh u/s 307 IPC and Gurdial Singh u/s 307/34 IPC to undergo rigourous imprisonment for three years each. However former was to pay fine of Rs. 1000/- and the latter was to pay Rs. 500/- as fine. In default of payment of fine they shall further undergo R.I. for another three months and two months respectively.

The facts necessary for disposal of this appeal, which led to the culmination of the trial are that, on 25.10.1990 around 5.00 P.M. when the complainant Balwinder Kumar hereinafter referred to as `complainant' was returning to his house and entered his street, both the accused came and called out Sukhdev Chand (complainant's uncle) from his house and challenged him for quarelling with women folk. Thereafter, Gurtej Singh dealt a '*gandasa'* blow from its blunt side striking Sukhdev Chand on the left side of his head. Balwinder Kumar moved forward in order to save

Sukhdev Chand, then the accused Gurdial Singh delivered a *`dang'* blow on his right shoulder. The hue and cry raised by them attracted Ram Paul and Ram Gopal witnesses to the place of occurrence. At this, both the accused fled away with their respective weapons. Sukhdev Chand was shifted to Civil Hospital, Kotakpura in a private car, from where he was referred to G.G.S. Medical College and Hospital, Faridkot. However, complainant-Balwinder Kumar did not subject himself to medicolegal examination.

The motive was that there used to be quarrel between the women folk of both the sides which incited the accused to cause injuries to Sukhdev Chand and Balwinder Kumar.

After receipt of the X-ray report from the doctor, the case was registered against the accused on the statement of the complainant. Investigation was conducted and both the accused were challaned under Section 307/323/34 IPC. Charges for the aforesaid offences were framed against them, to which they pleaded not guilty and claimed trial. In order to bring home the charges against the accused-appellants, the prosecution examined eleven witnesses. When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances appearing against them and pleaded their false implication in the case. Despite the opportunity, they did not lead any evidence in their defence. The trial ended in conviction. Hence this appeal.

I have heard Shri Rajesh Girdhar, counsel appearing for the appellants and Shri M.S.Joshi, Deputy Advocate General, Punjab appearing for the respondent-State of Punjab and have also scrutinised the records of the case with their able assistance. At the very outset, Shri Rajesh Girdhar has shown the courtesy while not challenging the prosecution version, however he has urged that prosecution story, as can't

be accepted as a whole. No case against the accused Gurtej Singh under Section 307 IPC is made out and Gurdial Singh cannot be held guilty for any offence.

Having given my thoughtful consideration to the contentions put forward by the counsel for the appellants, there is some substance in the same. As regards injury on the person Sukhdev Chand, the injury as depicted by PW-4 Dr. K.K.Aggarwal, Assistant Professor, G.G.S. Medical College and Hospital, Faridkot, who conducted the medical examination of Sukhdev Chand injured on 25.10.1990 at 7.05 P.M. is as under:-

> " Lacerated wound 8 cms x 1 cm present on left side of head and forehead over anterior hair line. It was bleeding profusely. Swelling was present on left side of forehead."

On receipt of X-ray report, he opined that there was no fracture underlying the injury but keeping in view the serious condition of injuries, he referred him to G.G.S. Medical College Hospital, Faridkot.

Thereafter, Dr. K.K.Aggarwal as well as Dr.J.S.Dalal formed the following opinion on 7.11.1990:-

> "1. Shri Sukhdev Chand was referred by S.M.O. C.H. Kotkapura vide his slip no. 698 at 6 p.m. On 25.10.90 after giving him necessary treatment in form of injection manitole, injection decadron etc. As per reference slip, the patent was semiconscious and vomiting, pupils were dilated and sluggishly reacting to light. The wound was dressed and M.L.C. was not done by S.M.O. since the patient was serious.
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> 2. He arrived in Emergency department at 6.45 p.m. On 25.10.90. The E.M.O. on duty examined the case and according to his record the patient was semiconscious vomiting and illoriented, pulse rate 60 per minutes, B.P.

130/78. Left pupil was sluggishly reacting to light.

3. The M.L.R. was prepared by me at 7.05 p.m. On 25.10.90 and at that time, the patient was semiconscious, vomiting was blood stained bleeding was present from nostrils. Left pupil was sluggishly reacting and pulse was 60 p.m. and a lacerated wound was present as described in the MLR.

4. The patient was admitted in the Surgery Unit I, G.G.S. Medical Hospital Faridkot. As per his record and Bed head tickets, the patient had history of unconsciousness and vomiting. On examination by doctor on duty, patient was semiconscious, left pupil's reaction was sluggish, both pupils were slightly constricted and respiration rate was 24 per minute. Stitching was done on 25.10.90 under local anaesthesia. On 26.10.90 the patient remained semiconscious and aspiration rate increased to 26 per minutes. Left pupil was slightly sluggish in reaction and at 9.15 a.m., the patient was unfit to make a statement. On 27.10.90, the patient was semiconscious and was responding to painful stimulie and move all four limbs on deep painful stimulie and patient was unfit to make a statement. On 28.10.90, the patient was better and responded to painful stimulie and responded to oral command. The patient was again unfit to give statement on 28.10.90. On 29.10.90, the patient was conscious and had head ache. On 30.10.90, the patient had head ache and could walk with support. On 31.10.90 the patient gave history of headache and hard of hearing on left side and was examined by doctor on duty in E.N.T., department who recorded left ear-mixed loss, responses were inconsistent

and was asked to retest again.

Ultimately, the patient was discharged on 2.11.1990 with the advise to attend the E.N.T. O.P.D. Keeping in view all the above observations, there was evidence of injury to brain which could be present even without fracture of skull and was dangerous to life."

The situation is alarming. Earlier Dr. K.K.Aggarwal, on receipt of X-ray examination, pointed out that there was no evidence of fracture and detect any injury to brain. But later on he appears to have changed the view with the intervention of Dr. J.S.Dalal and both of them declared injury dangerous to life without any further probe.

PW-5 Dr. Jatinder Pal Singh, who had X-rayed the injury on 29.10.1990 did not detect any fracture of skull.

Besides these testimonies of Dr. K.K.Aggarwal and Dr. Jatinder Pal Singh regarding the injuries, there is statement of Dr. D.R.Garg, PW-3. He stated that Sukhdev Chand was admitted on 25.10.1990 at Civil Hospital, Kotkapura, and referred him to G.G.S. Medical College, Faridkot by Dr, J.R.Bansal. The patient was discharged on 2.11.1990. He did not point out anything, if the condition of the patient ever deteriorated during the period of his admission in the hospital.

Now while analysing further, before making report by Dr. K.K.Aggarwal and Dr. J.S.Dalal, no C.T. scan or other evidence was placed on the file, which could be suggestive of the facts that injury was dangerous to life. There is also no evidence showing that during the period of treatment in the hospital, the condition of the patient ever deteriorated. It is not explained as to what transpired between the period from 25.10.1990 to 7.11.1990, which impressed Dr. K.K.Aggarwal and Dr.J.S.Dalal to declare the injury to be dangerous to life. Dr. K.K.Aggarwal has appeared in the witness box as PW-4, but he did not disclose any

data, on the basis of which, the injury was declared dangerous to life.

From the aforesaid observations made by Dr. K.K.Aggarwal and Dr. J.S.Dalal, it would not be safe to approve that injury of such a nature could endanger life.

It may, further, be observed that the injury is dangerous to life is an adjective and it refers to the injury which is dangerous to life in terms of Clause 8 of Section 320 IPC. The medical evidence is merely an opinion evidence and it does not attach any presumption of truth. The Court is not absolved from its responsibility to scrutinise the opinion on the cardinal principles as laid down in the medical jurisprudence and to check its truthfulness. A similar view was taken in Atma Singh v. State of Punjab 1982 (2) C.L.R. Page 496, wherein it was observed as under:-

> " We are of the view that the Court is not absolved of the responsibility while deciding a criminal case to form its own conclusion regarding the nature of the injury, Expert's opinion notwithstanding. The Court has to see the nature and dimension of the injury, its location and the damage that it has caused. Even when an unjury is described as to be one which endangers the life, the court has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the factors that should wiegh with the Court, already mentioned. We are also firmly of the view that wherever a doctor describes an injury as 'dangerous to life' and the nature of the injuries are such which could merit such a conclusion then such an injury has to be treated as 'grievous hurt' of the description mentioned in first portion of clause 8 of Section 320 of the Indian Penal Code."

Consequently, while examining the report, the nature and number of injuries, the intention of the accused and all other attending

circumstances of the case, the accused Gurtej Singh can't be said to have caused injury which really endangered life of the injured.

Now coming to the part attributed to Gurdial Singh, as per allegations, Gurdial Singh inflicted a *`dang'* blow on the shoulder of Balwinder Kumar, but Balwinder Kumar did not subject himself to medico-legal examination. In the absence of any such proof of injury on the person of Balwinder Kumar, the part attributed to Gurdial Singh by the prosecution cannot be believed. No such allegation that Gurdial Singh had common intention with Gurtej Singh in causing injury to Sukhdev Singh has been levelled or proved by the prosecution.

Consequently, keeping in view 13 days' delay in lodging the FIR, false implication of Gurdial Singh cannot be ruled out.

In the wake of aforesaid observations, I, therefore, partly accept the appeal and set aside the impugned judgment; acquit the accused Gurdial Singh of the charges framed against him and convict only Gurtej Singh under Section 324 IPC. He is stated to have already undergone more than two months imprisonment. Therefore, the sentence awarded to him is reduced to already undergone without altering the sentence of fine awarded against him which will be treated as fine u/s 324 IPC.

(A.N.JINDAL)
JUDGE

March 19, 2007
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